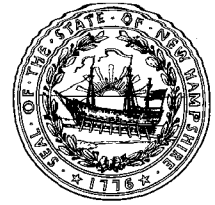




The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Andrew & Christine Lane  
2 Woodvue Road  
Windham, NH 03087

Re: 2 Woodvue Road, Windham  
Shoreland File #2002-02309

ADMINISTRATIVE ORDER  
No. WD 06-043

September 18, 2006

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**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Andrew and Christine Lane pursuant to RSA 483-B. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, in Concord, New Hampshire.
2. Andrew and Christine Lane are individuals having a mailing address of 2 Woodvue Road, Windham, NH 03087.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 483-B, the Comprehensive Shoreland Protection Act ("CSPA"), the Department of Environmental Services ("DES") regulates development activities in the protected shoreland zone established under the CSPA. Pursuant to RSA 483-B:17, the Commissioner of DES has adopted Env-Ws 1400 to implement this program.
2. Pursuant to RSA 483-B: 4, II, **accessory structure** means "a structure, as defined in paragraph XXII of this section, on the same lot and customarily incidental and subordinate to the primary structure, as defined in paragraph XIV of this section; or a use, including but not limited to paths, driveways, patios, any other improved surface, pump houses, gazebos, woodsheds, garages, or other outbuildings."
3. Pursuant to RSA 483-B: 4, XXII, **structure** means "anything built for the support, shelter or enclosure of persons, animals, goods, or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, exclusive of fences."
4. Pursuant to Env-Ws 1405.03 (b), an accessory structure shall have a footprint no larger than 150 square feet.

5. Pursuant to Env-Ws 1405.04, an accessory structure shall be set back at least 20 feet from the reference line.

6. Andrew and Christine Lane are the owners of land located on Woodvue Road in Windham, more particularly described on the Town of Windham Tax Map 18L as Lot 1 (the "Property").

7. On July 26, 1999, in response to a complaint of tree cutting within the protected shoreland, DES personnel conducted a site inspection of the Property, to determine compliance with the CSPA (Shoreland file #BB-99-052-3).

8. On August 2, 1999, DES issued a letter stating that based on available data, the tree removal was outside the jurisdiction of the CSPA.

9. On October 22, 2002, a complaint was filed with DES for alleged cutting and stump removal in a wetland area on the Property (Wetlands file #2002-2309).

10. On April 16, 2003, DES personnel conducted an inspection of the Property in response to the alleged violation and observed the following:

a. The elevation of Canobie Lake extended through a fringe scrub-shrub, emergent wetland located immediately lakeward of the Property. A distinct shoreline was observed along the Property consistent with abutting properties.

b. An area measuring approximately 60 feet by 100 feet situated on the western side of the Property near the lake and west of the house had been clear cut, with stumps remaining. The area contained a scoured channel, which, according to a dredge and fill application plan submitted in 1988, is a drainage easement area. The channel was clearly marked with wetland flagging;

c. On the eastern side of the Property felled trees had been stockpiled;

d. A small channel had been cut through the vegetation growing in the shallow area of the lake in front of the Property.

11. On April 29, 2003, DES issued a letter to the Lanes stating the reference line was closer than previously determined. DES recommended that no additional trees be cut and that if they wished to cut additional trees that they would need to retain a licensed surveyor to establish the exact elevation of the reference point on the Property.

12. On April 14, 2004, DES received a report from West Environmental, Inc., who inspected the Property on March 31, 2004, at the request of the Windham Conservation Commission. West Environmental, Inc., documented among other things that the Property was subject to the CSPA.

13. On October 20, 2004, DES personnel spoke with Mr. Lane relative to proposed garage construction and explained that under the requirements for accessory structures; he could encroach no more than 150 sq. ft. into the 50 ft. CSPA buffer.

14. On November 8, 2004, DES issued a letter to Andrew Lane stating that "the use of the garage will be incidental and subordinate to the use of the existing residence on the same lot, therefore the garage is considered an accessory structure per RSA 483-B:4, II." Information provided in a report by Nobis Engineering, dated October 11, 2004, indicates that the reference line elevation for Canobie Lake is 219.91 NOVD (National Geodetic Vertical Datum). The letter stated that the proposed garage location on the Property would include 46 square feet located inside the primary building line, less than the 150 square foot threshold for accessory structures, and therefore would be in compliance with the CSPA.

15. On July 13, 2005, DES received a complaint alleging the construction of a tennis court located between the primary building line and the reference line on the Property on Canobie Lake.

16. On July 25, 2005, DES personnel conducted another site inspection at the Property in response to the new complaint. During the inspection, DES staff notified Mr. Lane of the need to continue maintaining appropriate erosion controls on the Property related to the tennis court and garage construction. DES personnel also informed Mr. Lane that additional review would follow to determine the pre-existing status of the tennis court.

17. The photographs taken during the July 25, 2005, DES inspection show an area of disturbance that had been recently paved, which was observed to be more than 150 square feet in area within 50 feet of the reference line and observed to be within 20 feet of the reference line. This was the area of the partially-constructed tennis court.

18. On September 9, 2005, DES obtained an aerial photo dated June 23, 1999, from the Department of Resources and Economic Development. The photo documents a healthy, well distributed stand of vegetation, with no improved areas beyond the footprint of the house towards the lake. There is no indication of a pool, garage or tennis court located on the Property at the time the aerial photo was taken.

19. An aerial photo obtained by DES personnel from the New Hampshire Department of Transportation dated 2003 shows an unvegetated area on the Property but a tennis court was not present at that time.

20. Photographs taken during the April 16, 2003 DES inspection show a slightly-raised partially- unvegetated area that is covered by piles of lumber and a boat trailer on the Property. The tennis court was not constructed at that time and there was no recent disturbance in that area.

21. In September and October of 2005, DES received letters and photographs of the Property from the Canobie Lake Protective Association, Inc., regarding the completion of a tennis court

on the Property. One photograph submitted on October 8, 2005, shows the tennis court entirely completed with a surrounding enclosure.

22. On October 18, 2005, DES issued a Letter of Deficiency No. SP 2005-07 (the "LOD") to Mr. and Mrs. Lane requesting that they perform the following:

- a. Within 45 days of the date of the LOD, submit a restoration plan for removal of the paved area constructed for the tennis court located within 50 feet of the reference line for Canobie Lake.
- b. Have the plan stamped by a licensed land surveyor, clearly identify the reference line, and show existing conditions.
- c. Provide a proposal for removal of all improved areas and include appropriate erosion and sediment controls as well as a procedure for stabilizing the area after removal.
- d. Submit the plan and procedures for restoration to DES for review.

23. On October 19, 2005, DES received email correspondence from Mr. Lane asking to appeal the decision and requesting a meeting to discuss the LOD. Mr. Lane enclosed photographs which he asserted were evidence of the tennis court being built the same year as the swimming pool, in the summer of 2000 on the Property.

24. On November 18, 2005, DES received a letter from Mr. Lane, alleging that the tennis court was not new construction and that it was built in August of 1999, over the site of an old ice house, immediately after the August 2, 1999 letter from DES.

25. On January 6, 2006, DES issued a letter to Mr. and Mrs. Lane reaffirming the request to remove the paved portions of the tennis court located within 50 feet of the reference line. DES requested that Mr. and Mrs. Lane comply with the LOD within 20 days of the date of the letter.

26. On May 18, 2006, DES received photographs from the Canobie Lake Protective Association, Inc., showing that the tennis court had not been removed.

#### **D. DETERMINATION OF VIOLATIONS**

1. Andrew and Christine Lane have violated RSA 483-B and Env-Wq 1405.04 (previously "Env-Ws 1405.04(a)"), by placing an accessory structure within 20 feet of the reference line.
2. Andrew and Christine Lane have violated RSA 483-B and Env-Wq 1405.03(b) (previously "Env-Ws 1405.03(b)"), by constructing an accessory structure larger than 150 square feet located between the primary building line and the reference line.

### **E. ORDER**

Based on the above findings, DES hereby orders Andrew and Christine Lane as follows:

**1. Within 30 days of the date of this Order**, submit a restoration plan for removal of all portions of the tennis court that are located within 50 feet of the reference line for Canobie Lake. The plan shall:

a. be stamped by a licensed land surveyor, and shall clearly identify the reference line, established at elevation 219.91 NGVD, with the primary building setback, (50 feet from the reference line) shown.

b. show the existing conditions including the location and size of the tennis court, the house, pool, garage, normal high water mark (reference line) and property lines.

c. provide a proposal for removal of the tennis court, and include appropriate erosion and sediment controls and a procedure for permanently stabilizing the area with vegetation after removal.

**2. Implement** the restoration plan only after receiving written approval and as conditioned by DES.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Jeffrey D. Blecharczyk, Shoreland Compliance Coordinator  
DES Water Division  
P.O. Box 95  
Concord, NH 03302-0095  
Fax: (603) 271-6588  
e-mail: jblecharczyk@des.state.nh.us

### **F. APPEAL**

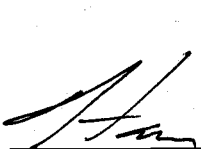
Any person aggrieved by this Order may appeal the Order to the New Hampshire Water Council in accordance with RSA 483-B:14 and NH Administrative Rules Env-WC 200. Such appeal must be filed with the Council within 30 days of the date of this Order and must be addressed to Chairman, Water Council, PO Box 95, Concord, NH 03302-0095. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.


Filing an appeal or request for reconsideration of the Order will not automatically relieve Andrew and Christine Lane of the obligation to comply with the Order.

### G. OTHER PROVISIONS

Please note that RSA 483-B provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor Mr. and Mrs. Lane's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Rockingham County Registry of Deeds so as to run with the land.

  
Harry T. Stewart, P.E. Director  
Water Division

  
Michael P. Nolin, Commissioner  
Department of Environmental Services

Certified Mail: 7006 0100 0005 8153 5450

cc: Gretchen R. Hamel, Administrator, DES Legal Unit  
Public Information Officer, DES Public Information Center  
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ  
Rockingham County Registry of Deeds  
Windham Selectmen  
Windham Conservation Commission  
Canobie Lake Protective Association, Inc.

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